

Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o
Kannakasabai, deceased)
[2013] SGHC 178

Case Number : District Court Suit No 335 of 2009 (Registrar's Appeal from Subordinate Courts No 89 of 2013)
Decision Date : 17 September 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : N K Rajarh (M Rama Law Corporation) for appellant; Susila Ganesan (Just Law LLC) for the respondent.
Parties : Teo Gim Tiong — Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)

Civil Procedure – Offer to Settle

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 132 of 2013 was allowed by the Court of Appeal on 21 May 2014. See [\[2014\] SGCA 38.](#)]

17 September 2013

Judgment reserved

Choo Han Teck J:

1 The plaintiff (the respondent in this Registrar's Appeal) was severely injured in an accident on 22 July 2006 when his motorcycle collided with a car driven by the defendant. He suffered brain damage and became permanently disabled and mentally incapable of managing his own affairs. His mother was appointed by an order of court dated 12 April 2007 to be the Committee of Persons to manage his affairs.

2 On 6 September 2011 the defendant (or more properly, his insurers) made an offer to settle ("OTS") on the terms that he pays the plaintiff a global sum of \$500,000 (inclusive of interim payment of \$85,000) and excluding costs and disbursements. The plaintiff died on 29 March 2012. The plaintiff's mother then applied and obtained an order of court on 12 April 2012 to be made the legal representative of the plaintiff's estate. On 12 April 2012 the defendant's solicitors served a notice that the OTS would be withdrawn.

3 The plaintiff (through his legal representative) served his acceptance of the OTS on the defendant at 9am on 13 April 2012. The defendant's solicitors served the withdrawal of OTS at 10.15am on 13 April 2012. Although the action had been progressing at an even pace since 2011, the solicitors for the parties suddenly bolted like sprinters all because the Rules of Court provides that an OTS which did not specify a time for acceptance may be withdrawn at any time upon one day's notice. The notice was given on 12 April 2012. The plaintiff thus realised that the terms of the OTS were more generous than an award would be after the plaintiff's death. Hence, the plaintiff's personal representative gave instructions to accept the OTS. Similarly, the defendant's solicitors realised that unless withdrawn, the defendant's insurers would be paying more than it needed to since damages for loss of amenities and medical care would be greatly reduced after the death of the plaintiff. The plaintiff filed an application to enter judgment on the terms of the OTS. The application was allowed and the defendant's appeal to the District Judge was dismissed. He then appealed before this court.

4 An offer to settle is a procedure to encourage the settlement of disputes by means of an offer that is fair and objective. If it is and the other party accepts it, the dispute would be resolved in the near ideal circumstances and terms. If it was fair and objective (measured by the judgment of the court) and was rejected by the other party, then the penalty for having prolonged the litigation unnecessarily is that the party rejecting the offer has to pay indemnity costs. Several attendant rules are thus necessary for an OTS to work. Payment of costs is one of them. The other is that the acceptance constitutes the end of litigation. The issue that is relevant in the appeal before me involved the rule that the offeror may retract an offer (which has no deadline) if it had not been accepted by giving one day's notice. The notice period is to ensure that the offeree was not caught by surprise. The obvious reason is that an offeree must be given time to consider the offer. A retracted offer is as good as not having made the offer, so the question of costs is not likely to arise.

5 Where, as in this case, an offer was made by a defendant on the basis that the plaintiff was entitled to substantial damages for loss of amenities and medical costs, the defendant will clearly retract the offer once he has reason to believe that the plaintiff's claim cannot be sustained, for example, by having died after the offer was made. The question is, before the offer is retracted, can the plaintiff's personal legal representative accept the offer? This is a difficult question. If the plaintiff died the day after accepting the offer there would be no case for the defendant to complain. That would have been a reasonable risk that ought to have been in the parties' contemplation.

6 However, in this case, the plaintiff's personal representative accepted the offer knowing that the plaintiff had died and having reason to believe that the damages recoverable should the matter proceed to the assessment of damages would be greatly reduced. If the defendant were to be bound to his OTS in these circumstances it might result in an overpayment to the plaintiff. That, however, does not necessarily mean that the payment is unjust. The purpose of the OTS is to avoid prolonged litigation by avoiding what would be a long and expensive process of assessment of damages. Sometimes the offeree gets more than might be deserved and sometimes less. Offers might be accepted even for reasons other than the offeree's belief that it was fair and just. The only way that its fairness might be more objectively ascertained is to have the quantum assessed by the court, but the idea of the OTS is to avoid that. The point is that once the offer is made, no inquiry is needed to justify whether it is sufficient. In the circumstances of the present case, the issue in question ought to be considered also from the point of consistency. If the defendant gave the notice of retraction of the OTS and the plaintiff then accepts the offer, but immediately after acceptance, finds that his injuries had worsened or the prognosis turned worse, can he retract his acceptance? The principle would be the same as that which Mr Rajarh now argues before me, that the circumstances in which the OTS had originally been made had changed. I am of the view that the principle must apply both ways. A change in circumstances is not enough; what is required to be shown is that the quantum is unfair or unjust and that means that if a party, whether plaintiff or defendant were permitted to use that as a gauge, litigants would be entitled to claim that an OTS is not binding on the ground that a change in circumstances that had resulted in the retraction or acceptance of an OTS, was unfair and unjust. That is contrary to the idea of the OTS. What is fair and just will be decided by the parties within the time limited for the offer to be accepted. The court is only required to adjudge whether the offer was fair and just when the offer has lapsed and the issue goes back before the court. I am thus of the view that the appeal before me must be dismissed. I will hear the question of costs at a later date if parties are not able to agree costs.

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